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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/696,754	10/25/2000	Bob Lamoureux	W0001-005001	3113

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EXAMINER

FISCHETTI, JOSEPH A

ART UNIT PAPER NUMBER

3627

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/696,754

**Applicant(s)**

LAMOUREUX ET AL.

**Examiner**

Joseph A. Fischetti

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 59-75 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 68-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 59-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Election of species and inventions stand following the presentation in the interview summary dated 6/24/04. Action on the merit follows:

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 59 and 60 and 64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of different is vague because it is unclear different from what? In claim 64, this claims reads like a narrative, it should be broken down into steps which can be digested from an examination stand point.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,6,9,10,12, 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman-'234 and Bowman-'244.

Bowman-'234 discloses distributing information bundles from different ones of a first plurality of different networked users to different ones of a second plurality of different network users according to a machine-readable format that includes values for a

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plurality of content attribute descriptors -see col. 233 lines 56 et seq. wherein it is stated that each data stream "includes an attribute descriptor defining elements of the data". However, it appears that '234 does not disclose deriving traffic statistics for the step of distributing based on values for the content attribute descriptors.

However, Bowman- '244 discloses in col. 200 lines 43-44, deriving attribute values for the purpose of auditing. It would be obvious to modify the method of Bowman -'244 to use the attributer information to audit usage of data because the motivation would be that interrogating a single item in a data bundle is easier than interrogating the whole. *What the descriptor describes is not given patentable weight given that anything can be attributed to such signals.*

Re claim 6 : Fig 72 illustrates an offer/acceptance scenario between provider and potential customer. It would be an obvious extension of the audit teaching in '244 to derive statistics about the presentation of offer bundles and acceptance rates for these offer bundles based upon theses scenario because the motivation would be to price at the market.

Re claim 9. since each attribute is interrogated in real time, auditing is deemed to obviously be conducted in the same manner.

Re claim 10. col. 239 Lines 60 et seq. describe using meta-tags which cause data to be written to a buffer or node of the customer.

Re claim 12: a ticker symbol field is deemed merely an intended use and does not constitute invention.

Re claim 65 official notice is taken to the standard format of bundles.

Claims 2,3, 4,6 7, 8 61,62,63,66,67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman-'234 and Bowman-'244 as applied to claims above, and further in view of Milsted et al. Milsted et al. disclose using metadata to package content 113 for electronic distribution and then uses store103 which uses the metadata for billing because it cannot access the content. It would be obvious to use the metadata tag system in the Bowman-'234 and Bowman-'244 combination because this would allow monitoring of transfer without having to see the full product.

Re claims 7 and 8; Milsted et al. disclose at step 610 statistics on transfers of contents identified by their metatags

Re claim 5 the tool 161executes bundling exclusive of human intervention.

Re claim 61 CD title has a value for licensing purposes.

Re claim 62 the artist name is deemed to be bundle type.

Re claim 63 artist is a key word known of standardized in the artists community.

Re claims 66,67, what statistics are used for is deemed a matter of intended use without merit to advancing a patentable step.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to Joseph A. Fischetti at telephone number (703) 305-0731.

*Joseph A. Fischetti*  
Primary Examiner 3627